

SUBCHAPTER D—ADDITIONAL PROTOCOL REGULATIONS

PART 781—GENERAL INFORMATION AND OVERVIEW OF THE ADDITIONAL PROTOCOL REGULATIONS (APR)

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AUTHORITY: United States Additional Protocol Implementation Act of 2006, Pub. Law No. 109-401, 120 Stat. 2726 (December 18, 2006) (to be codified at 22 U.S.C. 8101-8181); Executive Order 13458 (February 4, 2008).

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§ 781.1 Definitions of terms used in the Additional Protocol Regulations (APR).

The following are definitions of terms used in parts 781 through 786 of this subchapter (collectively known as the APR), unless otherwise noted:

Access Point of Contact (A-POC). The individual at a location who will be notified by BIS immediately upon receipt of an IAEA request for complementary access to a location. BIS must be able to contact either the A-POC or alternate A-POC on a 24-hour basis. All interactions with the location for permitting and planning an IAEA complementary access will be conducted through the A-POC or the alternate A-POC, if the A-POC is unavailable.

Act (The). The United States Additional Protocol Implementation Act of 2006 (Pub. L. 109-401).

Additional Protocol. The Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, with Annexes, signed at Vienna on June 12, 1998 (T. Doc. 107-097), known as the Additional Protocol.

Additional Protocol Regulations (APR). Those regulations contained in 15 CFR

parts 781 to 786 that were promulgated by the Department of Commerce to implement and enforce the Additional Protocol.

Agreement State. Any State of the United States with which the U.S. Nuclear Regulatory Commission (NRC) has entered into an effective agreement under Subsection 274b of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).

Beneficiation. The concentration of nuclear ores through physical or any other non-chemical methods.

Bureau of Industry and Security (BIS). The Bureau of Industry and Security of the United States Department of Commerce, including Export Administration and Export Enforcement.

Complementary Access. The exercise of the IAEA's access rights as set forth in Articles 4 to 6 of the Additional Protocol (see part 784 of the APR for requirements concerning the scope and conduct of complementary access).

Complementary Access Notification. A written announcement issued by BIS to a person who is subject to the APR (e.g., the owner, operator, occupant, or agent in charge of a location that is subject to the APR as specified in §781.3(a) of the APR) that informs this person about an impending complementary access in accordance with the requirements of part 784 of the APR.

Host Team. The U.S. Government team that accompanies the International Atomic Energy Agency (IAEA) inspectors during complementary access, as provided for in the Additional Protocol and conducted in accordance with the provisions of the APR.

Host Team Leader. The representative from the Department of Commerce who leads the Host Team during complementary access.

International Atomic Energy Agency (IAEA). The United Nations organization, headquartered in Vienna, Austria, that serves as the official international verification authority for the implementation of safeguards agreements concluded pursuant to the Treaty on

the Non-Proliferation of Nuclear Weapons (NPT).

ITAR. The International Traffic in Arms Regulations (22 CFR Parts 120–130), which are administered by the Directorate of Defense Trade Controls, U.S. Department of State.

Location. Any geographical point or area declared or identified by the United States or specified by the IAEA (see “*location specified by the IAEA*,” as defined in this section).

Location-specific environmental sampling. The collection of environmental samples (e.g., air, water, vegetation, soil, smears) at, and in the immediate vicinity of, a location specified by the IAEA for the purpose of assisting the IAEA to draw conclusions about the absence of undeclared nuclear material or nuclear activities at the specified location.

Location-specific subsidiary arrangement. An agreement that sets forth procedures, which have been mutually agreed upon by the United States and the IAEA, for conducting complementary access at a specific reportable location. (Also see definition of “*subsidiary arrangement*” in this section.)

Location specified by the IAEA. A location that is selected by the IAEA to:

(1) Verify the absence of undeclared nuclear material or nuclear activities; or

(2) Obtain information that the IAEA needs to amplify or clarify information contained in the U.S. declaration.

Managed access. Procedures implemented by the Host Team during complementary access to prevent the dissemination of proliferation sensitive information, to meet safety or physical protection requirements, to protect proprietary or commercially sensitive information, or to protect activities of direct national security significance to the United States, including information associated with such activities, in accordance with the Additional Protocol.

National Security Exclusion (NSE). The right of the United States, as specified under Article 1.b of the Additional Protocol, to exclude the application of the Additional Protocol when the United States Government determines that its application would result in access by the IAEA to activities of direct na-

tional security significance to the United States or to locations or information associated with such activities.

NRC. The U.S. Nuclear Regulatory Commission.

Nuclear fuel cycle-related research and development. Those activities that are specifically related to any process or system development aspect of any of the following:

- (1) Conversion of nuclear material;
- (2) Enrichment of nuclear material;
- (3) Nuclear fuel fabrication;
- (4) Reactors;
- (5) Critical facilities;
- (6) Reprocessing of nuclear fuel; or
- (7) Processing (not including repackaging or conditioning not involving the separation of elements, for storage or disposal) of intermediate or high-level waste containing plutonium, high enriched uranium or uranium-233.

Nuclear Material. Any source material or special fissionable material, as follows.

(1) *Source material* means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical, or concentrate. The term source material shall not be interpreted as applying to ore or ore residue.

(2) *Special fissionable material* means plutonium 239; uranium 233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the foregoing, but the term special fissionable material does not include source material.

Person. Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Report Point of Contact (R-POC). A person whom BIS may contact for the purposes of clarification of information provided in report(s) and for general information. The R-POC need not be the person who prepares the forms or certifies the report(s) for submission to

BIS, but should be familiar with the content of the reports.

Reportable Location. A location that must submit an *Initial Report*, *Annual Update Report*, or *No Changes Report* to BIS, in accordance with the provisions of the APR, is considered to be a “reportable location” with reportable activities (see § 783.1(a) and (b) of the APR for nuclear fuel cycle-related activities subject to these reporting requirements).

Reporting Code. A unique identification used for identifying a location where one or more nuclear fuel cycle-related activities subject to the reporting requirements of the APR are located.

Subsidiary Arrangement (or General Subsidiary Arrangement). An agreement that sets forth procedures, which have been mutually agreed upon by the United States and the IAEA, for implementing the Additional Protocol, irrespective of the location. (Also see the definition of “location-specific subsidiary arrangement” in this section.)

United States. Means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States, and includes all places under the jurisdiction or control of the United States, including any of the places within the provisions of paragraph (41) of section 40102 of Title 49 of the United States Code, any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (1) and (37), respectively, of section 40102 of Title 49 of the United States Code, and any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (section 1903(b) of Title 46 App. of the United States Code).

Uranium Hard-Rock Mine. Means any of the following:

- (1) An area of land from which uranium is extracted in non-liquid form;
- (2) Private ways and roads appurtenant to such an area; and
- (3) Lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on

the surface or underground, used in, or to be used in, or resulting from, the work of extracting such uranium ore from its natural deposits in non-liquid form, or if in liquid form, with workers underground, or used in, or to be used in, the concentration of such uranium ore, or the work of the uranium ore.

Uranium Hard-Rock Mine (Closed-down). A uranium hard-rock mine where ore production has ceased and the mine or its infrastructure is not capable of further operation.

Uranium Hard-Rock Mine (Operating). A uranium hard-rock mine where ore is produced on a routine basis.

Uranium Hard-Rock Mine (Suspended). A uranium hard-rock mine where ore production has ceased, but the mine and its infrastructure are capable of further operation.

U.S. declaration. The information submitted by the United States to the IAEA in fulfillment of U.S. obligations under the Additional Protocol.

United States Government locations. Those locations owned and operated by a U.S. Government agency (including those operated by contractors to the agency), and those locations leased to and operated by a U.S. Government agency (including those operated by contractors to the agency). United States Government locations do not include locations owned by a U.S. Government agency and leased to a private organization or other entity such that the private organization or entity may independently decide the purposes for which the locations will be used.

Wide-area environmental sampling. The collection of environmental samples (e.g., air, water, vegetation, soil, smears) at a set of locations specified by the IAEA for the purpose of assisting the IAEA to draw conclusions about the absence of undeclared nuclear material or nuclear activities over a wide area.

You. The term “you” or “your” means any person. With regard to the reporting requirements of the APR, “you” refers to persons that have an obligation to report certain activities under the provisions of the APR. (Also see the definition of “person” in this section.)

§ 781.2 Purposes of the Additional Protocol and APR.

(a) *General.* The Additional Protocol is a supplement to the existing U.S.-IAEA Safeguards Agreement, which entered into force in 1980. It provides the IAEA with access to additional information about civil nuclear and nuclear-related items, materials, and activities and with physical access to reportable locations where nuclear facilities, materials, or ores are located (to ensure the absence of undeclared nuclear material and activities) and to other reportable locations and locations specified by the IAEA (to resolve questions or inconsistencies related to the U.S. Declaration). The Additional Protocol is based upon and is virtually identical to the IAEA Model Additional Protocol (see IAEA Information Circular, INFCIRC/540, at <http://www.iaea.org/Publications/Documents/Infcirc/index.html>), except that it excludes IAEA access to activities with direct national security significance to the United States, or to locations or information associated with such activities, and provides for managed access in connection with those same activities and to locations or information associated with those activities.

(b) *Purposes of the Additional Protocol.* The Additional Protocol is designed to enhance the effectiveness of the U.S.-IAEA Safeguards Agreement by providing the IAEA with information about aspects of the U.S. civil nuclear fuel cycle, including: Mining and concentration of nuclear ores; nuclear-related equipment manufacturing, assembly, or construction; imports, exports, and other activities involving certain source material (i.e., source material that has not reached the composition and purity suitable for fuel fabrication or for being isotopically enriched); imports and exports of specified nuclear equipment and non-nuclear material; nuclear fuel cycle-related research and development activities not involving nuclear material; and other activities involving nuclear material not currently subject to the U.S.-IAEA Safeguards Agreement (e.g., nuclear material that has been exempted from safeguards pursuant to paragraph 37 of INFCIRC/153 (Corrected) June 1972).

(c) *Purposes of the Additional Protocol Regulations.* To fulfill certain obligations of the United States under the Additional Protocol, BIS has established the APR, which require the reporting of information to BIS (as described in parts 783 and 784 of the APR) from all persons and locations in the United States (as described in § 781.3(a) of the APR) with reportable activities. This information, together with information reported to other U.S. Government agencies and less any information to which the U.S. Government applies the national security exclusion, is aggregated into a U.S. declaration, which is submitted annually to the IAEA. The APR also provide for complementary access at such locations in accordance with the provisions in part 784 of the APR.

§ 781.3 Scope of the APR.

The Additional Protocol Regulations or APR implement certain obligations of the United States under the Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency Concerning the Application of Safeguards in the United States of America, known as the Additional Protocol.

(a) *Persons and locations subject to the APR.* The APR, promulgated by the Department of Commerce, shall apply to all persons and locations in the United States, *except*:

(1) Locations that are subject to the regulatory authority of the Nuclear Regulatory Commission (NRC), pursuant to the NRC's regulatory jurisdiction under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*); and

(2) The following *United States Government locations* (see definition in § 781.1 of the APR):

- (i) Department of Energy locations;
- (ii) Department of Defense locations;
- (iii) Central Intelligence Agency locations; and
- (iv) Department of State locations.

(b) *Activities subject to the APR.* The activities that are subject to the recordkeeping and reporting requirements described in the APR are found in parts 783 and 784 of this subchapter (APR).

§ 781.4 U.S. Government requests for information needed to satisfy the requirements of the APR or the Act.

From time-to-time, one or more U.S. Government agencies (i.e., the Department of Defense, the Department of Energy, the NRC, or BIS) may contact a location to request information that the U.S. Government has determined to be necessary to satisfy certain requirements of the APR or the Act (e.g., clarification requests or vulnerability assessments). If the manner of providing such information is not specified in the APR, the agency in question will provide the location with appropriate instructions.

§ 781.5 Authority.

The APR implement certain provisions of the Additional Protocol under the authority of the Additional Protocol Implementation Act of 2006 (Pub. L. 109-401, 120 Stat. 2726 (December 18, 2006)). In Executive Order 13458 of February 4, 2008, the President delegated authority to the Department of Commerce to promulgate regulations to implement the Act, and consistent with the Act, to carry out appropriate functions not otherwise assigned in the Act, but necessary to implement certain declaration and complementary access requirements of the Additional Protocol and the Act.

PART 782—GENERAL INFORMATION REGARDING REPORTING REQUIREMENTS AND PROCEDURES

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- 782.2 Persons responsible for submitting reports required under the APR.
- 782.3 Compliance review.
- 782.4 Assistance in determining your obligations.
- 782.5 Where to obtain APR report forms.
- 782.6 Where to submit reports.

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§ 782.1 Overview of reporting requirements under the APR.

Part 783 of the APR describes the reporting requirements for certain activities specified in the APR. For each activity specified in part 783, BIS may require that an *Initial Report*, an *Annual Update Report*, a *No Changes Report*, an *Import Confirmation Report*, a *Supplemental Information Report*, or an *Amended Report* be submitted to BIS. In addition, persons subject to the APR may be required to provide BIS with information needed to assist the IAEA in clarifying or verifying information specified in the U.S. declaration or in clarifying or amplifying information concerning the nature of the activities conducted at a location (see §§ 783.1(d) and 784.1(b)(2) of the APR for requirements concerning a *Supplemental Information Report*). If, after reviewing part 783 of the APR, you determine that you are subject to one or more APR reporting requirements, you may obtain the appropriate forms by contacting BIS (see § 782.5 of the APR). In addition, forms may be downloaded from the Internet at <http://www.ap.gov>.

§ 782.2 Persons responsible for submitting reports required under the APR.

The owner, operator, or senior management official of a location subject to the reporting requirements in part 783 of the APR is responsible for the submission of all required reports and documents in accordance with all applicable provisions of the APR.

§ 782.3 Compliance review.

Periodically, BIS will request information from persons and locations subject to the APR to determine compliance with the reporting and record-keeping requirements set forth herein. Information requested may relate to nuclear fuel cycle research and development activities not involving nuclear material, nuclear-related manufacturing, assembly or construction activities, or uranium hard-rock mining activities as described in part 783 of the APR. Any person or location subject to the APR and receiving such a request for information must submit a response to BIS within 30 calendar days